



Supreme Court of Kentucky

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Judicial Branch Budget Request: Priorities for Fiscal Budget 2016-2018

Chief Justice of Kentucky John D. Minton Jr.
Testimony before Senate Appropriations & Revenue Committee
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Capitol Annex, Room 149
Frankfort, Kentucky

Chairman McDaniel and Members of the Senate Appropriations & Revenue Committee,

I sincerely appreciate the opportunity to testify before you about the serious negative consequences the House version of the Judicial Branch budget bill will have on the Kentucky court system.

While I would have preferred to spend my time with you today offering an overview of our budget requests for the upcoming biennium, I'm afraid that message would be lost in light of the inexplicable actions of the House last week.

In spite of our strenuous objections, the House passed a Judicial Branch budget that could cripple court operations. The vote was 51 to 48.

I come here today to urge you to reject the House's version of our budget bill. Unless the legislature exempts the Judicial Branch from the budget reductions passed by the House and provides funding to reverse our structural imbalance, the court system will no longer continue to operate as we know it.

Our projected shortfall even before the governor's net reductions was \$52 million over the next biennium. And with the governor's proposed net reductions, the Judicial Branch was facing a shortfall of \$76.2 million during the next two years.

Following the governor's budget address, I had a very productive conversation with him regarding the funding crisis facing the court system. I recognize the difficult budgetary challenges Kentucky faces and I appreciate Governor Bevin's attempts to address these challenges, particularly the significant underfunding of the state pension system.

Despite also having productive meetings with House leadership, the House version of our budget leaves the Judicial Branch with an even greater shortfall of \$76.9 million over the biennium.

I appreciate that the House recognized it is simply not possible for the Judicial Branch to cut 4.5 percent (\$9.4 million) from our general fund in the current fiscal year. We would not be able to meet payroll and would have to shut down courts statewide for approximately three weeks.

But the House's cuts for FY 2017 and FY 2018 go even deeper than the Governor's proposed set-aside for the Judicial Branch. Along with the 9 percent cut for each fiscal year, the House also included specific earmarks that would have to be funded by the courts.

It's important to note that these cuts are to our Court Operations appropriation, which covers all payroll and operating costs for court offices in 120 counties.

Ramifications of Further Budget Cuts

Personnel costs make up 87 percent of the Judicial Branch budget and cuts this deep would require us to reduce more staff statewide. The Kentucky Constitution restricts the Judicial Branch from changing the salaries of our 403 elected justices, judges and circuit court clerks during their terms. This means that our non-elected personnel would bear the brunt of any reductions.

Our non-elected workforce includes 600 employees who carry out statutory responsibilities through our statewide Pretrial Services, Drug Court and Court Designated Worker programs. It also includes more than 1,700 deputies in the Offices of Circuit Court Clerk as well as law clerks, judicial secretaries and staff at the AOC's central office in Frankfort.

Our statewide programs provide critical services to our justice partners and citizens across the commonwealth. They also save the Executive Branch exponentially more dollars than they cost the state to operate. Yet these programs are most likely to be lost to meet the budget cuts required by the House.

The House's proposed budget would require us to eliminate approximately 600 jobs, which would be almost 18 percent of our eligible workforce. And even a reduction of that magnitude would not be enough to cover the shortfall.

If the House version of the Judicial Branch budget is not fixed, there's a very real likelihood we'll be forced to end our nationally-recognized Drug Court program. That means approximately 2,500 Drug Court participants would be incarcerated or require supervision from the Division of Probation and Parole. And it means our drug-ravaged communities would lose a proven treatment option they desperately need.

If the House version of the Judicial Branch budget is not fixed, there is also a very real likelihood we'll have to limit our nationally-recognized Pretrial Services program. That means approximately 17,000 defendants a year would be ordered back to county jails because there would not be enough pretrial officers to supervise them while on pretrial release. It also means that defendants will spend more time in county jails upon arrest because there won't be enough pretrial officers to make a release recommendation to the judge. Counties will bear the costs of this additional incarceration.

If the House version of the Judicial Branch budget is not fixed, our court designated workers would not be able to provide the front-end services required under Senate Bill 200, which is

proving successful in keeping young people out of detention. This would effectively halt the progress made since passage of juvenile justice reform legislation.

If the House version of the Judicial Branch budget is not fixed, we will have fewer deputy clerks in fewer locations, making it more difficult for citizens to obtain a driver's license.

If the House version of the Judicial Branch budget is not fixed, litigants may experience significant delays in having issues resolved in the courts.

If the House version of the Judicial Branch budget is not fixed, hundreds of non-elected court personnel across the state face the possibility of losing their jobs while elected circuit court clerks will receive a significant pay increase.

These reductions would be unprecedented in the history of the Kentucky court system. They would have an adverse effect on daily court operations and effectively prevent further progress on penal code reform and juvenile justice reform.

Funding the Structural Imbalance

To back up a bit, one of the reasons for this significant shortfall is that the Judicial Branch operations budget is structurally imbalanced. This means that expenditures have exceeded appropriations for budgets enacted by the General Assembly since 2008. At the direction of the General Assembly, the Judicial Branch has been required to use all of its Restricted Fund carry-forward to meet our current obligations.

The problem is that the restricted funds are now gone.

Since 2009, the Judicial Branch's Restricted Fund carry-forward has been spent down from \$40 million to a projected carry-forward of only \$500,000 for FY 2017. A \$500,000 carry-forward for a total budget in excess of \$370 million is completely inadequate and demonstrates the extremely tight margin for court operations.

It's important to understand how we arrived at this point. Since 2009, the Judicial Branch has experienced a succession of deep cuts that have brought us to the crisis we face today:

- In FY 2009, we were required to transfer \$7.6 million per HB 143 in the 2009 regular session.
- In FY 2010, we were required to transfer \$22.6 million per HB 4 in the 2009 extraordinary session. We then received a request from the governor at the end of that fiscal year to participate in the shortfall and the Judicial Branch contributed another \$1.6 million.
- In FY 2011, our budget appropriation was \$24.2 million less than the Judicial Branch needed to continue current operations. Despite this significant shortfall, our budget was further amended with an additional reduction of \$1.5 million.
- In FY 2012, with an appropriation that was \$26.7 million less than needed for operations, the 2011 session amended our budget and reduced the appropriation by

an additional \$7 million – a 2.26 percent reduction. To compound the problem, 2012 was the year we were required to lapse our last payroll in the amount of \$9.1 million.

- And in FY 2013 and FY 2014, there was another 8.4 percent reduction to our Court Operations appropriation. At that point the Judicial Branch was structurally imbalanced in excess of \$28.7 million.

That represents a 49 percent cumulative reduction in funding for the Judicial Branch since 2008. During that time, we also lost 10 percent of our non-elected workforce to layoffs and attrition. We've been cut to the point that we have no more fat to cut.

In looking at what got us here, I must also address how an aggressive judicial center building campaign had a negative impact on our structural imbalance. I understand the criticism of the last few years around the increased funding necessary to pay the debt service on the judicial center projects. The increased funding to our Local Facilities Appropriation unit contributed to reduced funding to Court Operations.

The General Assembly authorized these projects from 2005 to 2008, when the state's budget outlook was more robust. That occurred before my time. Since becoming Chief Justice in June 2008, my focus has been to responsibly reduce expenditures in the Judicial Branch while shifting our focus to invest in court personnel and new technology.

While I understand the difficult budgetary challenges you face, I must remind you that access to justice is the role of government.

Compromising access to justice is not what the framers intended when they established the Judicial Branch as the third branch of government. And that is not what the General Assembly or the people of this commonwealth intended when they passed the Judicial Article and amended the constitution to create a unified statewide court system that is entirely funded by an appropriation from the legislature.

In closing, I want to express my deep appreciation to the Legislative Branch, which has become our valued partner in positioning the court system for a bright and viable future. We've worked hard to foster honest, open communication with our legislators and build a relationship of mutual trust. We respect your role in writing the laws and take seriously our responsibility to be the boots on the ground, so to speak, by putting those laws into practice.

I strongly believe it is in the best interests of the people of this commonwealth for the legislature to honor our partnership by exempting the Judicial Branch from reductions and appropriately addressing our structural imbalance. It is my obligation to make very clear that the Judicial Branch must maintain adequate funding to provide its current level of services or the consequences will be catastrophic.

I encourage you to reject the version of the Judicial Branch budget bill sent to you by the House. My hope is that you will seize this opportunity to do the right thing.

Thank you and I'll be happy to answer any questions you may have.

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